



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

CONSOLIDATED RAIL CORPORATION )

a/k/a CONRAIL, )

Defendant and )

Third Party Plaintiff, )

PENN CENTRAL CORPORATION, )

et al., )

Third Party Defendants.)

The deposition of MARK D. RITCHIE

Date: Thursday December 17, 1992

Time: 12:30 p.m.

Place: 205 Jefferson Blvd.  
South Bend, Indiana

Called as a witness by the Plaintiff in  
accordance with the Indiana Rules of Civil Procedure,  
pursuant to agreement.

Geneva L. Sones  
Court Reporter

1 MR. KURT N. LINDLAND  
2 U.S. Environmental Protection Agency  
3 Region 5: CS-3T  
4 77 West Jackson Boulevard  
5 Chicago, Illinois 60604

6 For the Plaintiff;

7 MR. JAMES A. ERMILIO  
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9 Suite 1200  
10 1550 M. Street, N.W.  
11 Washington, D.C., 20005

12 For Consolidated Rail Corporation;

13 MR. PIERCE E. CUNNINGHAM  
14 Frost & Jacobs  
15 2500 Central Trust Center  
16 201 East Fifth Street  
17 Cincinnati, Ohio 45202

18 For Penn Central Corporation.  
19  
20  
21  
22  
23  
24  
25

I N D E X  
THE DEPOSITION OF  
MARK D. RITCHIE

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MARK D. RITCHIE

called as a witness by the Plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LINDLAND:

Q. Would you please state your full name for the record?

A. Mark D. Ritchie.

Q. What's your address, Mr. Ritchie?

A. (b) (6)

Q. And your phone number?

A. (b) (6)

MR. LINDLAND: As I indicated earlier, my name is Kurt Lindland. I'm an attorney with the United States Environmental Protection Agency and I represent the Agency in the action for which we are here today. If you don't understand a question that I ask, say that you don't understand it and I can rephrase it for you. If you need to take a break, let me know and we can arrange that.

THE WITNESS: Okay.

1 MR. LINDLAND: Are you familiar  
2 with the oath that you just took?

3 THE WITNESS: Yeah, you're  
4 supposed to tell the truth.

5 MR. LINDLAND: Do you recognize  
6 that oath as binding on you today, as  
7 it would be in a court of law?

8 THE WITNESS: Yes.

9 MR. LINDLAND: If there's an  
10 objection by anyone in the room, you  
11 should still answer the question  
12 unless you are instructed otherwise by  
13 your attorney. Do you understand  
14 everything I've just said?

15 THE WITNESS: Yeah.

16 BY MR. LINDLAND:

17 Q. Have you ever been deposed before?

18 A. One time, years ago.

19 Q. Do you remember what year?

20 A. In '66 or '67.

21 Q. Do you remember why you were deposed, the  
22 nature of the lawsuit or the action?

23 A. Traffic accident.

24 Q. Have you ever been deposed on any other  
25 occasion?

1 A. No.

2 Q. Have you ever testified at trial?

3 A. No.

4 Q. Did you speak with anyone in preparation for  
5 your deposition today, other than your  
6 attorney?

7 A. Nothing about what we're going to talk  
8 about, because I don't know what we're going  
9 to talk about.

10 Q. Did you speak with anybody about coming here  
11 today?

12 A. I told my boss, the first of the week, that  
13 I had to be here today to give a deposition.  
14 I got a message from this guy here, Mr.  
15 Ermilio, that I was supposed to be here  
16 today. I had a vacation day scheduled for  
17 today, so I thought it would be appropriate  
18 to let my boss know that I was going to be  
19 on the clock today.

20 Q. Did you speak with anybody else about this  
21 deposition?

22 A. No.

23 Q. Did you talk to Mr. Dively?

24 A. He's my boss, and I told him I had to be  
25 here.

1 Q. Did you talk about maintaining equipment or  
2 any of the questions that we might be asking  
3 today?

4 A. No.

5 Q. Nothing about the substance of what --

6 A. Nothing about what we're going to be talking  
7 about today. This morning he wanted me to  
8 notify a couple of the mechanic's of some  
9 jobs coming up for bid, and that was it.

10 Q. That's fine. I'm just talking about why  
11 we're here today, in your conversations with  
12 your boss.

13 A. Why are we here?

14 Q. Did you prepare any documents, any letters,  
15 or notes, or anything in preparation for  
16 coming here today?

17 A. No.

18 Q. Did you review any documents? Did you look  
19 at any contracts or any records prior to  
20 coming here today in preparation for this  
21 deposition?

22 A. The only thing that I looked at was to see  
23 who picks up our waste oil.

24 Q. And what document specifically did you look  
25 at?

1 A. Just a note that I had in my notes back at  
2 the office. When the company comes around  
3 to pick up the waste oil at the diesel shop  
4 when our tank gets full, one of my  
5 mechanic's stops at the diesel shop and  
6 tells them or talks to the guy that picks up  
7 the waste oil to pump our tank.

8 Q. There's a record that you looked at?

9 A. Not a record, just a note.

10 Q. A handwritten note?

11 A. Yeah. I asked him the name of the company  
12 that picked it up; that's about it.

13 Q. Did you look at any other records prior to  
14 coming here today in preparation for your  
15 deposition?

16 A. I don't really have any.

17 Q. Do you have any files of records regarding  
18 your job at Conrail, other than those in  
19 your office at Conrail?

20 A. Run that by me again.

21 Q. You mentioned that you have some notes and  
22 records regarding waste oil in your office  
23 at Conrail; is that right?

24 A. I've got a note as to who picks up the waste  
25 oil, and that's it.



1 Q. Do you have any other records?

2 A. No.

3 Q. You have no other records?

4 A. No.

5 Q. Do you know whether -- strike that. Did you  
6 bring with you any documents today?

7 A. I wrote down the name and address.

8 Q. The name and address of this location?

9 A. No. The name and address of the company  
10 that picks up our waste oil.

11 Q. Is that called PWI?

12 A. Supposedly, it's Heritage Petroleum  
13 Management. I've never called them, myself.

14 Q. I notice you have a phone number there, may  
15 I see that?

16 A. Yeah.

17 Q. Do you know who this?

18 A. The dispatcher.

19 Q. Does he work for Heritage?

20 A. Evidently. I got this information from one  
21 of my mechanic's.

22 Q. Which mechanic was that?

23 A. A.T. Smith.

24 MR. ERMILIO: Can we read that  
25 information into the transcript?

1 MR. LINDLAND: Sure. The  
2 deponent showed me a small notebook,  
3 and in there it's written "Heritage  
4 Petroleum Management. Dispatch: Tom."  
5 The phone number is 317-243-0811.

6 BY MR. LINDLAND:

7 Q. How long has Mr. Smith been in your  
8 department?

9 A. He was working in Elkhart when I came to  
10 Elkhart five years ago.

11 Q. He was there prior to 1988?

12 A. Yeah.

13 Q. I'd like to get some information on your  
14 background. Did you attend high school?

15 A. Yeah.

16 Q. Did you graduate from high school?

17 A. Yeah.

18 Q. What year did you graduate?

19 A. In 1958.

20 Q. What high school did you graduate from?

21 A. Hindman High, Hindman, Kentucky.

22 Q. Did you attend any other formal education  
23 after that?

24 A. No.

25 Q. Have you had any informal training or

1 seminars since 1958?

2 A. Such as?

3 Q. Are you familiar with the term "training?"

4 A. Yeah.

5 Q. Let's start with while you were employed by  
6 Conrail, have you attended any seminars or  
7 training?

8 A. A few on repairs of different kinds of  
9 equipment.

10 Q. Do you remember when the first training you  
11 attended, with Conrail, on repairing  
12 equipment was?

13 A. In 1977 or '78, or thereabouts.

14 Q. Was that sponsored by Conrail?

15 A. Yeah.

16 Q. Where was that training?

17 A. We had one in the west end of the equipment  
18 shop in Toledo, but most of them have been  
19 at Holiday Inns.

20 Q. In Toledo?

21 A. In Toledo and Canton, Ohio.

22 Q. Starting with this first one in 1977 or '78,  
23 do you remember whether maintenance of  
24 equipment was ever discussed at that  
25 training?

1 A. Most of what I remember is teaching us how  
2 to troubleshoot electronics and hydraulics.

3 Q. In troubleshooting the electronics, do you  
4 remember whether they discussed cleaning  
5 electronics or cleaning electrical  
6 components?

7 A. I don't remember.

8 Q. Do you remember whether they discussed  
9 cleaning parts generally at that training?

10 A. I don't remember them discussing cleaning of  
11 parts in any of them.

12 Q. In any of them?

13 A. No.

14 Q. How many, approximately, have you attended?

15 A. Six or eight, but that's just a guess.

16 Q. Off and on between '77 and the present?

17 A. Yeah.

18 Q. And in none of those you remember  
19 discussions or materials on hazardous  
20 substances or cleaning materials; is that  
21 right?

22 A. Right.

23 Q. After 1958 were you employed?

24 A. Sure.

25 Q. Where?

1 A. The first time, I guess I was driving a dump  
2 truck for my brother and hauling asphalt for  
3 Reith-Riley.

4 Q. How long did you do that for?

5 A. A couple of summers.

6 Q. For a couple summers?

7 A. Yeah.

8 Q. What was your next job?

9 A. I run a delivery truck, picking up  
10 drycleaning in Hindman, Kentucky.

11 Q. You would pick up the clothes?

12 A. Right. And after they were cleaned, I'd  
13 take them back.

14 Q. How long did you do that for?

15 A. A few months.

16 Q. What was your next job?

17 A. I drove a cab in West Carlton, Ohio about  
18 that time or shortly after that -- wait a  
19 minute. It might have been before that, I'm  
20 not sure.

21 Q. What did you do between 1970 and 1977?

22 A. Drove a truck.

23 Q. For who?

24 A. I worked for Holly Park, Monarch Industries,  
25 and Commodore Corporation for a little bit.

- 1 Q. Where were these located?
- 2 A. Elkhart, Shipshewana, Middlebury, Holly
- 3 Mobile Homes.
- 4 Q. Were those companies manufacturers of mobile
- 5 homes?
- 6 A. Right.
- 7 Q. What did you do in 1977?
- 8 A. Mechanic for Conrail.
- 9 Q. Was that in the Elkhart yard?
- 10 A. No.
- 11 Q. Where was that?
- 12 A. In the Toledo division. I ran a crane part
- 13 of '77, and then I took mechanic's job in
- 14 the fall.
- 15 Q. What department did you work in?
- 16 A. M and W.
- 17 Q. What does M and W stand for?
- 18 A. Maintenance of Way.
- 19 Q. What were your responsibilities as a
- 20 mechanic?
- 21 A. Repair broken equipment.
- 22 Q. Have you ever heard of trichloroethylene?
- 23 A. Not to my knowledge. I might have heard the
- 24 term.
- 25 Q. Where do you think you heard the term?

1 A. I said that I might have heard the term.

2 Q. But you don't know for sure that you heard  
3 it?

4 A. I don't know if I even heard of it or not.  
5 What it is, I don't know.

6 Q. Have you ever heard of carbon tetrachloride?

7 A. Yeah.

8 Q. Where have you heard of carbon  
9 tetrachloride?

10 A. I heard of carbon tetrachloride when I was a  
11 kid. It used to be commonly used in fire  
12 extinguishers.

13 Q. How do you know it was used in fire  
14 extinguishers? Was that just common  
15 knowledge?

16 A. At that time, it was common knowledge.

17 Q. What time are you talking about?

18 A. In the fifties or early '60s.

19 Q. Have you ever heard of carbon tetrachloride  
20 since then?

21 A. I might have heard the term, but I've not  
22 seen any. I can't remember when I've seen  
23 any, unless it would be back around the  
24 early '60s.

25 Q. And you say the "early '60s," referring to

1 fire extinguishers?

2 A. Right. That's the only time I ever heard of  
3 it used, in fire extinguishers.

4 Q. You never heard of it used as a cleaning  
5 solution?

6 A. No.

7 Q. Do you know whether fire extinguishers  
8 containing carbon tetrachloride were ever  
9 used out at Conrail's rail yards in Elkhart?

10 A. I've never seen that type of fire  
11 extinguisher on Conrail.

12 Q. Did you ever see one out at the Toledo yard?

13 A. Not to my knowledge.

14 Q. What did you do after 1978?

15 A. Worked as a mechanic.

16 Q. Out of Toledo?

17 A. Yeah.

18 Q. How long were you at the Toledo division?

19 A. I think I come to Elkhart the fall of '87,  
20 maybe August or September.

21 Q. What was your position at Elkhart in 1987?

22 A. Supervisor of equipment.

23 Q. Are you still supervisor of equipment?

24 A. Yeah.

25 Q. Going back to 1977 when you were a mechanic



1 in Toledo, Ohio, with Conrail, were you  
2 responsible for maintaining equipment?

3 A. Yeah.

4 Q. If you could, just define for me what  
5 maintaining equipment is.

6 A. If a machine breaks down, if it's got an  
7 electrical problem, you try to fix the  
8 electrical problem. If it's something on  
9 the machine that breaks, you either replace  
10 it or weld it.

11 Q. Does maintaining include cleaning parts?

12 A. Once in a while we clean a little bit, but  
13 not that much.

14 Q. When you do clean parts what do you use, or  
15 how do you clean them?

16 A. Most of my mechanic work is in the field,  
17 and you don't have too much means in the  
18 field. You just wipe it down with a rag,  
19 take a screwdriver and clean the dirt and  
20 grease off, scrape it off and wipe it up the  
21 best you can. You're working in the dirt  
22 and you don't have much means.

23 Q. Do you have any cleaners with you, or  
24 anything?

25 A. No.

1 Q. Do you use any solvents or something to cut  
2 the grease?

3 A. Maybe a little gasoline or diesel fuel;  
4 that's all we got. Usually, if a pump goes  
5 bad, you just take one off and stick another  
6 one on, wipe off the fittings put her back.

7 Q. What do you do with the old pump?

8 A. Send it in to be rebuilt.

9 Q. Do you ever repair anything in the yard  
10 itself, the yard in Toledo?

11 A. Yeah.

12 Q. Is there a building that you would fix parts  
13 in -- wait, let's go back. You said that a  
14 lot of your responsibility regarding  
15 maintenance would be out in the field, would  
16 there be some maintenance that would not be  
17 in the field?

18 A. In the wintertime we worked inside. They  
19 had a shop there in Toledo.

20 Q. What kind of maintenance would you do in the  
21 shop in Toledo?

22 A. Same thing: cut, weld, replace broken parts,  
23 fix lights.

24 Q. Would you ever use a parts cleaner in the  
25 shop in Toledo?

1 A. They had a tank there.

2 Q. What kind of tank?

3 A. A wash tank with solvent in it. If you had  
4 a part that you needed to clean, you'd take  
5 it over, clean it off, wash it off, which  
6 contained everything, the dirt, grease, and  
7 the solvent.

8 Q. Do you know what solvent that was?

9 A. No, not really.

10 Q. Do you remember what kind of container it  
11 came in?

12 A. I never filled it or changed it.

13 Q. Who was responsible for filling or changing  
14 that, do you know?

15 A. I don't know. I guess it was just whoever  
16 the boss designated at the time.

17 Q. In 1987 you moved to Elkhart, right?

18 A. Yeah, my job.

19 Q. If you could, just describe your  
20 responsibility as the supervisor of  
21 equipment, beginning in 1987.

22 A. If a piece of equipment is broke down or we  
23 have a problem, I dispatch a mechanic to  
24 take care of the problem. If he runs into a  
25 problem that he can't figure out, then I go

1 try to help him out. If I can't figure it  
2 out, I call somebody from the factory that  
3 made it.

4 Q. What kind of equipment do you maintain in  
5 your department?

6 A. Cranes, backhoes, tampers, ballast  
7 regulators, air compressors, saws, drills.

8 Q. What are tampers?

9 A. They squeeze stone underneath the ties, to  
10 help keep the railroad solid.

11 Q. You mentioned that Mr. Dively was your  
12 immediate supervisor, how many mechanics do  
13 you have working for you?

14 A. Six, I think.

15 Q. Have any of those mechanics been at the  
16 Elkhart yard for longer than 10 years?

17 A. Continuous?

18 Q. What do you mean?

19 A. I'm trying to find out what you mean.

20 Q. Since 1956 have any of your mechanics worked  
21 at the rail yard?

22 A. Well, some of them. All of them has, at one  
23 time or another, since '56.

24 Q. How about consecutively for the last 10  
25 years?

1 A. Consecutively, I don't think so.

2 Q. Who in your department, that is a mechanic,  
3 has worked at the rail yard the longest  
4 period of time?

5 A. A. T. Smith.

6 Q. How long has he been there?

7 A. Nearly five years.

8 Q. Do you know whether any of your mechanics  
9 worked at the rail yard between 1970 and  
10 1980?

11 A. I wasn't there between 1970 and 1980, so I  
12 can't answer that question.

13 Q. What are the names of your mechanics?

14 A. John Becker.

15 Q. Do you know how long John Becker has worked  
16 for Conrail?

17 A. I believe he's been there since around 1974.

18 Q. Do you know how many years he's worked at  
19 the Elkhart yard, not consecutively but just  
20 at the Elkhart yard?

21 A. Two years.

22 Q. Two years?

23 A. Periodically, before; but the last two  
24 years.

25 Q. I want to know the the earliest date that

1           somebody in your department has worked at  
2           the Elkhart yard.

3           A.   I don't know.   Like I said, I wasn't there  
4           from --

5           Q.   But you said that periodically they've  
6           worked there, how do you know that they've  
7           worked there periodically if you haven't  
8           worked there before 1980?

9           A.   Anything before '87, I don't know about  
10          that.

11          Q.   You don't know whether any of your employees  
12          have worked at the Elkhart yard prior to  
13          1987?

14          A.   No.   If you're not there, you don't know;  
15          right?

16                   MR. LINDLAND:   No, that's not  
17                   true.

18                   MR. CUNNINGHAM:   Kurt, come on.

19                   MR. ERMILIO:   Kurt, I think you  
20                   may have missed something.   He said  
21                   that Mr. Becker has worked there for  
22                   the last two years, and periodically  
23                   beforehand.   This is 1992, so that  
24                   would mean back to 1990.   Mr. Ritchie  
25                   has been there since 1987, so he could

1 know whether he was there periodically  
2 before the last two years, which would  
3 mean between '87 and '90. His answer  
4 was consistent with his prior answer.

5 BY MR. LINDLAND:

6 Q. Who are your mechanics, other than John  
7 Becker and yourself?

8 A. Cliff Gunter, Hayden Hunt, Bill Keats, Ralph  
9 Penrod.

10 Q. You mentioned that your department is  
11 responsible for maintaining cranes, air  
12 compressors, tampers, backhoes, and saws and  
13 drills. When you say "maintaining," do you  
14 mean repairing the mechanical as well as  
15 electrical?

16 A. Right, and front-end loaders or whatever  
17 they got, basically.

18 Q. How are parts cleaned when they're in the  
19 shop?

20 A. In the Elkhart yard we don't have a shop,  
21 but we do have a small wash tank. If we  
22 really get into something in particular, the  
23 guys take it up and wash it in the wash  
24 tank. We don't rebuild engines and we don't  
25 rebuild transmissions. If we have a bad

1 hydraulic cylinder, we change it. If we  
2 have a bad hydraulic pump, we change it.

3 Q. And then those parts are sent out?

4 A. We put them in a tub and ship them back to  
5 Toledo, and they ship them on to be  
6 repaired. We're basically parts changers.

7 Q. Why would you wash something in the wash  
8 tank then?

9 A. Once in a while we get into small items that  
10 we have to try to fix because we don't have  
11 the proper parts to replace it with.

12 Q. What kinds of small items are you talking  
13 about? You can just use an example.

14 A. A little hydraulic pump. If that goes bad,  
15 we try to take two pumps and make one.  
16 Sometimes we drop parts on the floor and get  
17 dirt all over it.

18 Q. This wash tank was there in 1987 when you  
19 got there?

20 A. No. Mr. Montagano got that for us, but I  
21 don't remember exactly what year we got  
22 that.

23 Q. Did you have a wash tank there in 1987?

24 A. No.

25 Q. There was nothing to wash parts with in



1 1987?

2 A. No.

3 Q. Is there a name for this wash tank?

4 A. I don't know what it is.

5 Q. Have you ever heard of a Safety Kleey Parts  
6 Washer?

7 A. I've heard of Safety Kleen, but I don't know  
8 if they make a parts washer or not.

9 Q. Do you know if they're connected with this  
10 wash tank at all?

11 A. I don't know.

12 Q. What kind of material do you use to wash  
13 parts with in this tank?

14 A. Mineral spirits, that's what we've used in  
15 the past.

16 Q. Is that what you use now, too?

17 A. Yeah.

18 Q. How much mineral spirits do you use in a  
19 month?

20 A. Since we got that wash tank I only recall  
21 ordering or receiving one 55-gallon barrel  
22 of mineral spirits, and it was probably  
23 around '88 when we got that.

24 Q. You still have that drum of mineral spirits?

25 A. I don't know if there's any left or not.

1 Q. Where is that drum located?

2 A. We kept it in one of the garages there in  
3 the yard.

4 Q. Is it still kept in the garage?

5 A. If we have any.

6 Q. Do you use any other liquids for cleaning?

7 A. No.

8 Q. If you need to clean electrical components  
9 how do you clean them?

10 A. We don't clean too many, but a lot of the  
11 electrical components, if we have a problem,  
12 we take a file and file them.

13 Q. You never spray them?

14 A. They might have some contact cleaner that  
15 they spray on them.

16 Q. Do you know what that contact cleaner is  
17 called?

18 A. No.

19 Q. Are you familiar with material safety data  
20 sheet, or MSDS?

21 A. I've heard of them, but I don't -- I've not  
22 really been into it.

23 Q. Are there any posted in your shop?

24 A. No.

25 Q. Do you know for what materials you have an

1 MSDS for?

2 A. No.

3 Q. Do you know whether there are any  
4 refrigerants used or stored by employees in  
5 your department?

6 A. We've got a little bit of Freon for air  
7 conditioners for some of the machines.

8 Q. In what machines?

9 A. The tamper has an air conditioner, and some  
10 of the ballast regulators has an air  
11 conditioner.

12 Q. The ballast regulator is something that lays  
13 down ballast in a certain amount?

14 A. It pulls the stone inside the gauge of the  
15 track, plows it off and forms a shoulder;  
16 that's about it.

17 Q. And the air conditioning is for the  
18 personnel using that equipment?

19 A. Right.

20 Q. Where is the Freon stored?

21 A. Our parts room formerly was a radio shop,  
22 and they had a cubicle in there to repair  
23 radios in. We keep that inside that, locked  
24 up.

25 Q. What kind of container is it in?

1 A. (Indicating.) We've got one container, and  
2 it's a bottle about like so. I don't know  
3 what the weight is.

4 Q. Is it a compressed air container?

5 A. Yeah. It reminds you of bottled gas.

6 Q. Propane?

7 A. Yeah.

8 Q. How much Freon do you go through in a year?

9 A. I don't know.

10 Q. Do you know what the name of this Freon is?

11 A. I never particularly looked at the name of  
12 it, it's just regular Freon.

13 Q. Who orders it?

14 A. I think I ordered that from our Toledo shop.

15 Q. Do you order it through a catalog?

16 A. Yeah. Conrail's got their own catalog and  
17 you can order about anything you want. They  
18 got their own store, so we just order it  
19 through Conrail stores. I don't know who  
20 they buy it from.

21 Q. Is there any material that you buy from  
22 local vendors; in other words, material that  
23 you use but don't buy from the shop store?

24 A. A few parts.

25 Q. Are you talking about mechanical parts or

1 cleaning material?

2 A. Mechanical parts.

3 Q. Do you buy any liquids from local vendors?

4 A. Maybe 90-weight gear lube, or something of  
5 that nature.

6 Q. Have you ever heard of Mid City Supply?

7 A. No.

8 Q. Do you buy any other liquids locally, or  
9 from sources other than the purchasing  
10 department at Conrail?

11 A. I don't. If we're in a pinch for gear lube  
12 or motor oil, or something like that, we  
13 might grab a case of something of that  
14 nature.

15 Q. You mentioned that the parts room is in what  
16 used to be the radio shop, is this radio  
17 shop located somewhere else now?

18 A. Yeah.

19 Q. Do you know where it's located?

20 A. Yeah. It's in the old "Y" at the Elkhart  
21 yard.

22 Q. The old "Y?"

23 A. Yeah. It used to be a dormitory for the  
24 trainmen.

25 Q. Is this what's known as the "dormitory?"

1 A. Yeah.

2 Q. Do you know whether there's an MSDS for the  
3 Freon you use?

4 A. I don't think so.

5 Q. Are you aware of any material stored in your  
6 department, in 55-gallon drums, other than  
7 mineral spirits?

8 A. We've got a barrel of antifreeze and a  
9 couple of barrels of jet lube.

10 Q. Do you know who makes the antifreeze?

11 A. No.

12 Q. That antifreeze is used in your equipment?

13 A. Right.

14 Q. Do you have any other liquids, other than  
15 antifreeze, jet lube, if you consider a  
16 semi-solid a liquid, and mineral spirits?

17 A. Maybe some starting fluid.

18 Q. Do you buy the starting fluid from the  
19 purchasing department?

20 A. We order it through Conrail stores.

21 Q. Approximately how much starting fluid do you  
22 use in a year or a month, if that's easier?

23 A. I think I ordered 30 cases for this winter,  
24 and that's 12 cans to a case.

25 Q. What do you do with the empty cans?

1 A. Throw it in the trash, I suppose.

2 Q. Is there a trash dumpster located near your  
3 building?

4 A. There's trash dumpsters all over the yard.

5 Q. They just throw them in a trash dumpster?

6 A. I suppose.

7 Q. You say "I suppose" because you don't know?

8 A. I personally seldom ever hand anybody a can  
9 of starting fluid. The mechanics use it and  
10 they dispose of the can.

11 Q. Are there any other liquids other than  
12 starting fluid, jet lube, mineral spirits,  
13 and starting fluid used in your department?

14 A. Penetrating oil, and contact cleaner for  
15 electric.

16 Q. Do you have any paint thinner?

17 A. I don't know if we have any or not, to be  
18 honest with you.

19 Q. Is your department responsible for painting  
20 equipment that they fix?

21 A. Once in a while, if we weld something, we'll  
22 take some spray paint and spray the area  
23 that we welded, but we really don't paint.  
24 That's just small areas where we weld.

25 Q. Do you ever use PVC piping for anything?

1 A. Not that I remember. That's the plumbing  
2 department.

3 Q. Generally it is, you're right. When you  
4 repair an engine on a piece of equipment and  
5 you need to change the oil what do you do  
6 with the waste oil?

7 A. We've got a big tank that holds 500 gallons,  
8 and we dump the waste oil in that. And this  
9 Heritage, that was mentioned earlier -- when  
10 the tank starts getting full, my mechanic  
11 stops at the diesel shop and requests that  
12 when their guy picks up their waste oil that  
13 he picks up ours; and they pick it up.

14 This Heritage makes, I suppose,  
15 regular pickups at the diesel shop; we don't  
16 have that much. A lot of our stuff don't  
17 get changed on a regular basis. And when  
18 our barrel starts getting full, my mechanic  
19 stops down at the diesel shop and asks their  
20 guy to pick it up; and they pick it up.

21 Q. Approximately how many barrels do they pick  
22 up at a time?

23 A. Not barrels, it's a big tank. We don't have  
24 barrels.

25 Q. Now you have tanks?



1 A. Yeah.

2 Q. Prior to 1991 did you have barrels that you  
3 stored --

4 A. We've had this tank for a long time.

5 Q. So when the tank is full, these people come  
6 and pick it up?

7 A. Yeah.

8 Q. Are you aware of any other contractor like  
9 that that picks up waste material from your  
10 department?

11 A. Supposedly there's an outfit called Safety  
12 Kleen, that Conrail has a contract with,  
13 that picks up this stuff.

14 Q. Picks up what stuff?

15 A. Waste oil.

16 Q. To the best of your knowledge has anything  
17 other than waste oil been put into the tank  
18 that you're referring to?

19 A. No. The whole purpose is waste oil.

20 Q. I'm just wondering whether you've heard of  
21 anybody putting something other than waste  
22 oil in there?

23 A. When they clean their wash tank they  
24 probably dump that in with the waste oil.

25 Q. They dump the mineral spirits in with the

1 waste oil?

2 A. Yeah.

3 Q. And does Safety Kleen pick up the tank of  
4 waste oil, or does Heritage pick up the  
5 waste oil?

6 A. To my understanding, Heritage.

7 Q. You mentioned that there was a Safety Kleen  
8 contract, how do you know about the Safety  
9 Kleen contract?

10 A. Mr. Dively, I believe, told me that Conrail  
11 has a contract with Safety Kleen. But we  
12 have used the outfit that's been coming into  
13 the yard anyway, instead of calling somebody  
14 else.

15 Q. Is there a catch basin where you wash the  
16 parts in this part washer?

17 A. It's like a tank, and you put your mineral  
18 spirits in it. It's got its own little pump  
19 that circulates that. Whatever comes off  
20 the parts stays right in the tank.

21 Q. When you take that material from the tank  
22 and you bring it over to the large tank with  
23 the waste oil, is there any catch basin  
24 underneath where you transfer?

25 A. You just take a pan, or whatever, to catch

1           what comes out of the parts washer, and  
2           funnel and pour it in the big tank. You  
3           take a pan or a plastic bottle, or whatever,  
4           a 5-gallon bucket.

5           Q. Is there any written procedure for doing  
6           that?

7           A. I've not seen one.

8           Q. Do you know whether there's any written  
9           procedures regarding spills or responding to  
10          spills of mineral spirits?

11          A. No.

12          Q. If there was a spill of mineral spirits from  
13          this basin, the wash basin, would that be  
14          recorded anywhere?

15          A. To my knowledge, we've never had a spill.

16          Q. But is there a written procedure or some  
17          policy that says if there is a spill this is  
18          what you do?

19          A. No.

20          Q. Is there any material near the parts washer  
21          for soaking up a spill?

22          A. Rags.

23          Q. Is there anything else?

24          A. No.

25          Q. Where this parts washer is located is there

1 a cement floor under it?

2 A. Yeah.

3 Q. Is there a drain in the floor?

4 A. No.

5 Q. Are there any cracks in the floor?

6 A. I've not seen any.

7 Q. Are you familiar with any kind of equipment  
8 used to clean up spills of materials that  
9 occur on the tracks? I understand you have  
10 a track cleaning machine that sweeps up  
11 debris and has a hopper, is there any type  
12 of machinery that is used to clean up spills  
13 of liquid material?

14 A. Not to my knowledge.

15 Q. Is your department responsible for greasing  
16 equipment?

17 A. The operator is supposed to do that, the  
18 machine operator.

19 Q. And that's not within your department?

20 A. No.

21 Q. Are you aware of any special handling  
22 instructions regarding the mineral spirits,  
23 or any of the other liquids you've  
24 identified, that are used in your  
25 department; for example, wearing protective

1 clothing, or masks, or anything?

2 A. No.

3 Q. A while ago you mentioned that you were  
4 vaguely familiar with an MSDS, or a Material  
5 Safety Data Sheet, are you aware of any  
6 MSDS's for any material used in your  
7 department?

8 A. No. I know they make them, but I don't have  
9 them handy.

10 Q. Where would those be located?

11 A. I don't know.

12 Q. Are there any records that you prepare and  
13 send to Mr. Dively in the course of your  
14 responsibilities at Conrail?

15 A. Any records?

16 Q. Repair records, anything of this sort?

17 A. At the end of the year we ship a lot of  
18 equipment to Canton, and I write the  
19 machines up as to what they need for winter  
20 repair; maybe some of the stuff that goes to  
21 Toledo. Some of the stuff out here I write  
22 them up to let him know what needs to be  
23 done, or let the other shops know.

24 Q. Are you aware of an MW-15B form?

25 A. That's what I'm talking about.

1 Q. That's the form you would write up?

2 A. Right.

3 Q. Are you aware of any records relating to  
4 safety that you would fill out and send to  
5 Mr. Dively?

6 A. I do safety observations all the time. I  
7 watch and observe how the mechanics work.  
8 We've got a form called a 101 and a 102, and  
9 you put down the safety rule that you used  
10 for the performance of what they're doing.  
11 You write that up and send it in.

12 Q. If there was a spill of mineral spirits, for  
13 example, would that be written down on an  
14 S-101 or an S-102 form?

15 A. It could be. If I seen any kind of a spill  
16 of a liquid I'd write it up and say, "Hey,  
17 this is not what we do." It could cause  
18 slipping or tripping hazards, or it could be  
19 the wrong kind of chemical where somebody  
20 could get a rash or skin burn, or whatever.

21 Q. This is an observation form, so it's based  
22 on what you actually see?

23 A. Right.

24 Q. What shift do you work?

25 A. Days.

1 Q. You work, roughly, 8:00 in the morning until  
2 5:00 at night?

3 A. From 7:00 in the morning until 4:00 o'clock  
4 in the evening, or later sometimes.

5 Q. Are parts cleaned at night?

6 A. Only if the mechanic is working overtime and  
7 that situation arises.

8 Q. Do you have mechanics working other than  
9 during the day?

10 A. All the time, periodically.

11 Q. All the time periodically, or periodically  
12 all the time?

13 A. From time to time.

14 Q. Do mechanics ever wash or clean parts at  
15 night?

16 A. I don't know how to answer you; they're  
17 there and I'm not.

18 Q. Do mechanics maintain equipment at night?

19 A. Sometimes.

20 Q. And you testified earlier that part of  
21 maintaining equipment includes cleaning  
22 parts; is that right?

23 A. Sometimes.

24 Q. Do you know whether the rules that you were  
25 referring to earlier, with respect to the

1 S-101, do you know whether there are any  
2 rules that specifically apply to handling  
3 hazardous materials?

4 A. I'm sure that there's some rules, but right  
5 off the top of my head I don't remember  
6 which ones.

7 Q. But you do know there are some rules, in  
8 that rule book, that apply to hazardous  
9 materials?

10 A. I'm sure.

11 Q. Have you ever heard of a company called  
12 "PWI?"

13 A. No.

14 Q. Have you ever heard of an individual by the  
15 name of Dave Allison?

16 A. No.

17 Q. Are you aware of a Safety Kleen parts washer  
18 other than the parts washer that's located  
19 in your building? Are you aware of another  
20 parts washer at the Elkhart yard?

21 A. No.

22 MR. ERMILIO: For the record, he  
23 didn't say that the other one was a  
24 Safety Kleen.

25 MR. LINDLAND: I'm sorry.



1 MR. ERMILIO: He did say that  
2 it's a parts washer.

3 MR. LINDLAND: It's a parts  
4 washer in his building.

5 MR. ERMILIO: Right.

6 BY MR. LINDLAND:

7 Q. Are you aware of any other parts washer,  
8 regardless of its name, located at Elkhart?

9 A. No.

10 Q. Do you know who Tom Reynolds is?

11 A. I think I met him a few years ago.

12 Q. Do you have any idea what his job is?

13 A. Not really, no.

14 Q. Have you ever called Tom Reynolds?

15 A. No.

16 MR. LINDLAND: I have no further  
17 questions.

18 CROSS EXAMINATION

19 BY MR. CUNNINGHAM:

20 Q. Mr. Ritchie, I'm Pierce Cunningham, the  
21 attorney for Penn Central. You were not in  
22 any way connected with the Elkhart rail yard  
23 until the summer or fall of 1987; is that  
24 right?

25 A. That's correct.

1 Q. As a result of not being there, I take it  
2 you have no knowledge whatsoever of any  
3 hazardous spills that may have occurred  
4 before you got to that rail yard; correct?

5 A. That's correct.

6 Q. And that would include not only your own  
7 personal knowledge but rumors about any  
8 spills; is that right?

9 A. That's correct.

10 Q. You know, neither of your own personal  
11 knowledge, or by rumor, of any hazardous  
12 spills before 1987?

13 A. That's correct.

14 Q. Do you know of any hazardous spills after  
15 1987 until the present?

16 A. The only spills that I know of in the  
17 Elkhart yard is that you can drive down the  
18 road and see stuff, not liquid, more of a  
19 solid form -- it's spots in the track that  
20 they clean up with the track cleaner; that's  
21 all I know.

22 Q. And that's probably from leaking tank cars  
23 or --

24 A. Leaking hopper cars or --

25 MR. ERMILIO: Objection. He said

1                   that those were not liquid.

2           BY MR. CUNNINGHAM:

3           Q.   Not liquid?

4           A.   Not liquid.

5           Q.   What would they be from?

6           A.   Grain and maybe fertilizer, lime or  
7                whatever. I don't know what they are. You  
8                can see different colored spots down through  
9                there.

10          Q.   Bricks or lumber, or whatever?

11          A.   Maybe fertilizer or lime, or --

12          Q.   Nonliquid substances?

13          A.   Nonliquid.

14                   MR. CUNNINGHAM: I don't have any  
15                   further questions.

16                   MR. LINDLAND: I have just a  
17                   couple.

18                   REDIRECT EXAMINATION

19          BY MR. LINDLAND:

20          Q.   I'm familiar with the track cleaner and the  
21                way it operates, and based on prior  
22                testimony I understand that if it's wet out  
23                that that track cleaner will clog up; is  
24                that your understanding?

25          A.   I suppose it could.

1 Q. If it does clog up is your department  
2 responsible for cleaning it?

3 A. The operator usually takes care of it.

4 Q. Your department is not responsible for  
5 cleaning out the hopper in the track cleaner  
6 or any of the working parts of the cleaning  
7 portion of the track cleaner?

8 A. If it breaks down our mechanic goes and  
9 fixes it. I suppose that if he got it  
10 jammed up they might go give him a hand, but  
11 outside of that...

12 Q. Do you know what they do with that material?

13 A. They put it in big gondolas and ship it  
14 wherever. I don't know where it goes.

15 Q. Does it go to the rail yard, the Elkhart  
16 yard?

17 A. No. They pick it up in the Elkhart yard and  
18 then it gets shipped out. Where it gets  
19 shipped, I don't know.

20 Q. Who would know that?

21 A. Montagano, I guess.

22 Q. If there was a spill of material, for  
23 example, oil or some other liquid that your  
24 department employees use, and you found out  
25 about it because they told you, would you

1 contact someone?

2 A. Yeah. If we had a spill we'd try to get it  
3 taken care of.

4 Q. Who would you call?

5 A. I would probably call my boss first.

6 Q. Mr. Dively?

7 A. Mr. Dively or Mr. Montagano. I would ask  
8 them who do we have to get hold of to clean  
9 this up.

10 Q. And by "spill," what do you recognize a  
11 spill to be?

12 A. Well, it's certainly more than a cup.

13 Q. Like a gallon?

14 A. I don't know.

15 MR. ERMILIO: A spill of what?

16 BY MR. LINDLAND:

17 Q. If, for example, there's a spill of mineral  
18 spirits, of a gallon, would you report that?

19 A. First of all, mineral spirits we don't run  
20 around with. And we'd probably soak it up  
21 with rags and burn it; that's what we would  
22 have done in the past. If you put it in the  
23 dumpster and a spark gets in there, the  
24 whole dumpster goes up.

25 Q. Where would you take it out to burn it? Was

1           there a special place that this was done?

2           A. I don't know that it was done. But if I was  
3           going to take care of a gallon, I'd get away  
4           from everybody else.

5                   MR. ERMILIO: Were you talking  
6           about a hypothetical situation?

7                   MR. LINDLAND: Right, exactly.  
8           But I'm asking if there is a special  
9           area that this --

10                   THE WITNESS: No. We don't have  
11           a special incinerator area.

12           BY MR. LINDLAND:

13           Q. It's just outside?

14           A. Like I said, since we've had the washer in  
15           the last four years, to my knowledge we've  
16           only received one barrel, one 55-gallon  
17           barrel of mineral spirits. We don't use a  
18           lots of it.

19           Q. What about oil, is that the same, used oil?  
20           If you spilled a gallon of used oil would  
21           you mop that up with a rag and go out and  
22           burn it?

23           A. If we spilled a gallon of used oil we'd  
24           probably mop it up and put it in the  
25           dumpster.

## CERTIFICATE

I, Richard L. Holle, a Notary Public in and for the County of St. Joseph and State of Indiana, duly authorized to administer oaths, do hereby certify there appeared before me at the said time and place WESLEY L. CALLENDER, who was first duly sworn to testify the truth, the whole truth, and nothing but the truth in response to questions propounded at the taking of the foregoing deposition in the foregoing cause.

I further certify that I reported in machine shorthand (Xscribe) the testimony so given and that it was then reduced to typewriting under my supervision; that the foregoing typewritten transcript is a true and accurate record thereof.

I further certify that deposition was read and signed in the presence of a duly authorized officer by the deponent.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this \_\_\_\_ day of \_\_\_\_\_, A.D., 1992.

Richard L. Holle, CSR, CP  
Notary Public, State of Indiana  
Residence: St. Joseph County  
My Commission Expires 2-22-95